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OFFICE OF PETITIONS

In re Application of :
Daniel Henry Decaux :
Application No. 09/937,583 : ON PETITION
Filed: 18 January, 2002 :
Attorney Docket No. 68142-015 :

This is a decision on the petition under 37 CFR 1.137(b),¹ filed on 13 April, 2004, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on 27 November, 2003, for failure to file a proper response to the final Office action mailed on 26 August, 2003, which set a three (3) month shortened statutory period for reply. No extensions of the time for reply

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

in accordance with 37 CFR 1.136(a) were obtained. An amendment after final rejection was filed on 24 October, 2003. However, the examiner determined that the amendment did not *prima facie* place the case in condition for allowance, and an Advisory Action was mailed on 8 March, 2004. The filing of the present petition precedes the mailing of Notice of Abandonment.


Petitioner has filed a Notice of Appeal as the required reply.

The Notice of Appeal filed 13 April, 2004, has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, in triplicate, accompanied by the fee required by law, runs from the date of this decision.

Receipt of an Appeal Brief filed with the present petition is acknowledged.

The application will be forwarded to Technology Center 1700 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.


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Office of Petitions